

GARY E. MERTLE

IBLA 83-288

Decided May 5, 1983

Appeal from a decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 24486.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of performance of assessment work on the claim prior to Dec. 31 of each year. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not filed timely because it was lost in the mail, the consequence must be borne by the claimant.

APPEARANCES: Gary E. Mertle, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Gary E. Mertle 1/ appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated December 16, 1982, which declared the unpatented Water Wheel placer mining claim, CA MC 24486, abandoned and void because evidence of annual assessment work for 1981 was not filed on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The 1981 proof of labor was received and date stamped by BLM January 10, 1983.

1/ The claim appears to be owned by Gary and Rhonda Mertle, Frank and Norma Shettlesworth, Cheryl and John Andersakis, and Maryln and Harold Shettlesworth.

Appellant alleges that he mailed a copy of his proof of labor to the county recorder of Plumas County, California, on December 15, 1981, and on December 30, 1981, he mailed a copy of the proof to BLM in Sacramento. As the envelope was not returned to him by the Postal Service, he assumed it had been duly received by BLM.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1(a) and 3833.4(a), require that evidence of assessment work for each year be filed in the proper office of BLM on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claim has been abandoned if the documents are not timely or properly filed.

Although appellant asserts that the document was actually mailed to BLM on December 30, 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if there was delay in delivery or loss of the envelope containing the evidence of assessment work by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Regina McMahon, *supra*; Everett Yount, *supra*. Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

